



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,909	11/17/2000	Ronald D. Flannagan	35718/204664	5613

29122 7590 08/05/2004

ALSTON & BIRD LLP  
PIONEER HI-BRED INTERNATIONAL, INC.  
BANK OF AMERICA PLAZA  
101 SOUTH TYRON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

EXAMINER
----------

HAYES, ROBERT CLINTON

ART UNIT	PAPER NUMBER
----------	--------------

1647

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/715,909

Applicant(s)

FLANNAGAN ET AL.

Examiner

Robert C. Hayes, Ph.D.

Art Unit

1647

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: 30 and 31.

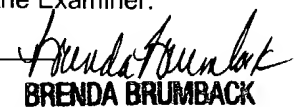
Claim(s) rejected: 1-3, 7, 8, 10-18, 28, 29, 32 and 34-39.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

10. ☐ Other: \_\_\_\_\_

  
**BRENDA BRUMBACK**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

Continuation of 2. NOTE: new redundant claim 7f no longer has proper antecedent basis for the recitation of "sequence encoding the fusion polypeptide"; thereby, necessitating a new rejection under 112, 2nd pp.

Continuation of 3. Applicant's reply has overcome the following rejection(s): if later entered, the 112 2nd pp rejections would be obviated as well as the written description rejection under 112, 1st pp, as it relates to "comprising... fragments/polypeptides of interest".

Continuation of 5. does NOT place the application in condition for allowance because: the claims have not been limited to the *Ostrinia nubilalis* species described, and instead still encompass the order/genus of Lepidopteran; thereby, still not meeting the written description requirements under 112, 1st pp, for the reasons made of record. Applicants other arguments are currently moot, since the claim amendments have not been entered.



**ROBERT C. HAYES, PH.D.**  
**PATENT EXAMINER**



**BRENDA BRUMBACK**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**